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ABSTRACT

This publication seeks to provide reasonable and practical answers to basic questions of professional ethics and is intended to help the reader to understand the sometimes overlapping organizational relationships and to plan an orderly course of action. The four chapters cover the following topics: 1) ethical problems in teaching, defining professional ethics, implementing the code, and purpose and scope of the publication; 2) identifying problems and examining solutions, code standards related to employment conditions, administrative coercion of teachers, the local association, code standards related to matters of law, inactivity of the profession, lack of impartiality in local associations, and dealing with minor infractions; 3) professional processing of ethics complaints, exercise of initiative, role of the local association, and role of the state association; and 4) role of the local association in school district complaint processing, board authority to discipline, institutional capabilities of board, problems of lay control, advantages of joint determination, devices for influencing employers, and using the grievance procedure. Appendixes include the code of ethics of the education profession, proposed bylaw language for local associations, a condition of membership, a proposed clause conferring reciprocity in disciplinary acts, and sources of appeal. (MBM)

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Committee on Professional Ethics

Protecting the Profession's Interest in Ethical Conduct

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Contents

Foreword ii

Introduction 1
- Ethical Problems in Teaching 1
- Defining Professional Ethics 2
- Implementing the Code 4
- Purpose and Scope of the Present Publication 6

Identifying Problems and Examining Solutions 8
- Code Standards Relate to Employment Conditions 8
- Administrative Coercion of Teachers 13
- The Local Association: Judge or Advocate? 14
- Code Standards Relate to Matters of Law 16
- Inactivity of the Profession 20
- Lack of Impartiality in Local Associations 22
- Dealing with Minor Infractions 22

Professional Processing of Ethics Complaints 24
- Whose Initiative: Employer or Association? 24
- Role of the Local Association 25
- Role of the State Association 33

Role of the Local Association in School District Complaint Processing 39
- Board Authority to Discipline 39
- Institutional Capabilities of Board 39
- Problems of Lay Control 40
- Advantages of Joint Determination 41
- Devices for Influencing Employers 42
- Using the Grievance Procedure 47

Appendix A
- Code of Ethics of the Education Profession 51

Appendix B
- Proposed Bylaw Language for Local Associations, Adherence to the Code of Ethics, A Condition of Membership 55
- A Condition of Membership 55

Appendix C
- Proposed Clause for Inclusion in a Unification Agreement Conferring Reciprocity in Disciplinary Acts, and Sources of Appeal 56

Footnotes 57

Bibliography 59

NEA Committee on Professional Ethics 63

Foreword

The education profession has changed drastically in the last decade, and traditional patterns of operation for professional organizations no longer always fit the model. Adjustments must be made to adapt to new relationships and to assimilate new techniques.

The values espoused by educators throughout the years as basic ethical concerns have not changed significantly. The means used to protect and maintain those values must change, however, if they are to be effective. Associations must pose to themselves and answer some basic questions:

- Many local associations have assumed new roles and responsibilities as negotiator-representative-advocate of a negotiating unit. How does the ethics program relate to that role?
- The standards expressed by educators in their Code of Ethics are also spoken to in other rules enforced on teachers—in law, in board policy, in administrative regulation. Where does the ethics program fit in the overlapping systems, and how can the association influence judgments in other systems to reflect its values?
- Sometimes associations confront an issue which represents both a question of ethics and a grievance. How does the association prevent the internal conflict and chaos that could result from trying to process both at the same time?
- School boards and administrators have considerable power to affect the employment conditions of teachers. How can the association limit the arbitrary use of that power and protect professional values?
- As associations gain strength through their collective relationship, how can they prevent employers from using the ethics program as a means to enforce administrative rules?

This publication seeks to provide reasonable and practical answers to these and other questions. The sequence of the book is intended to assist the reader in understanding the sometimes overlapping organizational relationships, and to help him plan an orderly course of action. Through this process, the Committee hopes that the ethical concerns of the profession may be more adequately asserted.

1 Introduction

ETHICAL PROBLEMS IN TEACHING

- A social studies teacher includes in a unit on current affairs a series of lectures and discussions on drug use. This evokes complaints from parents who think the subject will encourage experimentation, and the superintendent forbids the teacher to continue the unit.
- In a racially polarized community, the local association is publicly misrepresented by its president as supporting racially segregated classrooms.
- Out of personal animosity, a teacher gives a failing grade to a student.
- A school principal calls a meeting of the teachers in his school and urges them to support a particular candidate for state association president.
- A football coach applies for a position in a small junior college where the incumbent coach has indicated no intention of leaving.
- An individual obtains a teaching position and membership in the teachers' professional organization by falsely claiming to hold a bachelor's degree.
- For personal reasons, a department chairman sends a poor evaluation of a competent and professional teacher to another college where the teacher is applying for a position.
- A principal requires that black students use separate dressing facilities for their physical education classes.

Every profession has its ethical problems, and the examples cited above are typical of those in the education profession. Teachers, in the course of their work, have an opportunity to influence, either positively or negatively, the welfare of others, and they are therefore continually faced with questions involving ethical judgments.

Recognizing the vulnerability of others to their actions, and reflecting an urge for professional recognition, educators have for many years sought to define standards of appropriate ethical practice in formal codes. The first NEA Code, adopted in 1929, has been

modified and elaborated on several occasions. The most recent version, the *Code of Ethics of the Education Profession*, adopted in 1968 and amended in 1970, is set forth in Appendix A. Referred to in this publication as "the Code," it represents a collective effort to define and give explicit expression to the ethical values which educators regard as important in their professional relationships.

DEFINING PROFESSIONAL ETHICS

Even though an educational code has been in existence for some forty years, discussions of teacher ethics still reveal widespread disagreement about the nature of ethical behavior. Consider the following typical expressions. "It's unprofessional for teachers to participate in work stoppages." "Isn't criticism of the superintendent unprofessional?" "It's not ethical for Jack Smith to act as party precinct chairman in the board election." "Can't we expel him for walking through the teachers' picket line?" "Aren't professionals supposed to support all elected officials?" Such views of ethical behavior are common; others relate professional ethics to a teacher's competence or his conformity to a community's moral code. At one time or another, ethical conduct is equated by some with every aspect of a teacher's behavior, from his observance of rules of social etiquette to his compliance with the law. For the purpose of clarity in this publication, it would be well to define terms at the outset.

Minimum behavior guarantees

"Ethics" in a general sense refers to a code of behavior involving moral questions of right and wrong and incorporating desirable ideals. A code of professional ethics, in contrast, is a collection of basic, practical principles of right action for the members of a particular profession, representing minimum behavioral guarantees which are enforced through disciplinary action.

Occupational ground rules

A code of ethics has been described as a set of ground rules for the practitioner's occupational relationships with his clients, his colleagues, his employer, and the public.

Universal standards

In an occupational setting in which more than twenty thousand institutions employ educators, or in which literally millions of clients "employ" physicians, an important function of a code is

to assert universal values which are applicable to all members of the profession, and to discourage the existence of provincial variations reflecting localized and possibly limited values.

Part of a complex system

Rather than being seen as a kind of total control on practitioner behavior, a code of ethics should be viewed in the context of a complex system of formal controls which affect the behavior of the members of a profession. In the educational setting, such controls include federal and state statutes, accreditation and certification standards, and institutional (school district, university) policies and regulations. Each system has its own unique control functions; it is in the public interest that each achieve its purposes and that separation and harmony among the systems be maintained.

Protection of mistakes

An important function of a code is to separate from willful or calculated errors those allowable errors that do occur, that do not raise an ethical value, and that should therefore be legitimized rather than proscribed. For this reason, the Code says that a distortion or misrepresentation of the facts must generally be done "knowingly" before it becomes unethical; suppression of subject matter must be deliberate. Thus, a teacher commits no ethical breach by not knowing the answer to a question or by giving a wrong date in a history class. The commission of an error is not a violation of an ethical standard per se; although such acts might, under certain circumstances, be seen as incompetent, they are not generally regarded as unethical. The principle is that every practitioner has the right to some protected mistakes, and his professional code must provide the basis for defining such protection.

Rights and responsibilities

A code of ethics should not be thought of merely as a statement of responsibilities. Rights and responsibilities are not opposites; rather, responsibilities are a part of rights, flowing from them. To quote MacIver, "An ethical code is something more than the prescription of a duty of an individual toward others; in that very act it prescribes their duty towards him and makes his welfare too its aim. . . ."[1]

Increased public trust

Finally, a code of ethics signifies the voluntary assumption of the obligation of self-discipline beyond the requirements of the

law. It is a signal to the public, as expressed in the Preamble to the Code, that each member of the profession "recognizes the magnitude of the responsibility he has accepted in choosing a career in education, and engages himself, individually and collectively with other educators, to judge his colleagues, and to be judged by them. . . ." An important function of the Code, therefore, is to help to increase public confidence and trust in the profession. That is not an unselfish function.

In summary, the Code endorsed by some two million educators in the United States describes minimal behavior standards, based on universal rather than parochial values, to guide the educator in his occupational relationships. It further legitimizes certain types of errors which occur in the educational environment and seeks to increase public trust in the profession.

IMPLEMENTING THE CODE

Until 1963, there was a proliferation of ethical codes among state and local associations, which made implementation difficult. At that time, the NEA adopted a single code for the profession and passed a resolution urging "the development of professional channels in each local and state association designed to adjudicate violations of the Code of Ethics and protect the professional privileges of individual members."[2] To assist local and state associations in carrying out this charge of the legislative body, the NEA Committee on Professional Ethics and the Commission on Professional Rights and Responsibilities jointly developed, in 1964, a paper entitled *Implementing the Code of Ethics of the Education Profession and Strengthening Professional Rights.*

The publication provided guidelines to national, state, and local PR&R and ethics committees to assist them in processing two types of cases:

1. A teacher alleges that his rights have been abridged (usually under an employment contract).
2. A complainant alleges that there has been a violation of the profession's Code of Ethics.

In describing processes for handling such complaints (classified as legal, grievance, or ethics referrals), the publication dealt with such subjects as:

- Overall PR&R functioning
- Grievance processing
- Standards and procedures for the conduct of investigations

- Protection of legal rights of teachers
- Procedures for enforcement of the Code.

Specialized publications

Based on the experiences of local, state, and national committees over the past six years, the Committee on Professional Ethics has modified some of the positions it took in the 1964 document. This publication represents the Committee's thinking at this time and is intended to replace the "Implementing" publication. It is also the present view of the Committee that separate documents, with a sharp focus on a specific aspect of PR&R concern and directed at the needs of a particular association level, might be of more assistance than a single publication encompassing all PR&R functions at all three association levels. In line with this thinking, the following publications have been developed and are presently available.[3]

PR&R and the Local Education Association. A broad, general paper which re-examines the basic functional design of the overall PR&R operation at the local level.

The Local Education Association and Grievance Adjustment. A definitive treatment of the role of the local association in processing teacher grievances.

Standards for the Conduct of Investigations. Recommended standards and procedures to be followed by state associations in conducting PR&R investigations.

Protecting Teacher Rights: A Summary of Constitutional Developments. A description of existing rights of teachers under law.

Rules of Procedure for Investigation. The procedural rules and safeguards observed by the national PR&R Commission in conducting its investigations.

Enforcement of the Code of Ethics of the Education Profession. Procedures followed by the NEA Ethics Committee in adjudicating ethics complaints when it accepts original jurisdiction and when it accepts appellate jurisdiction.

Opinions of the Committee on Professional Ethics. A compilation by the Ethics Committee of interpretations of various sections of the *Code of Ethics of the Education Profession* in specific fact situations.

PURPOSE AND SCOPE OF THE PRESENT PUBLICATION

The NEA Ethics Committee has prepared this publication for the purpose of helping local associations, in particular, as well as other representational bodies with an interest in the ethical conduct of teachers, to understand the diverse problems they face in seeking to implement ethical standards in a complex institutional environment. A second purpose is to explore alternate routes to the resolution of these problems.

Local association leaders indicate that a major problem of Code implementation stems from the difficulty of differentiating between ethics problems and employment grievances. A definition that is frequently used describes an ethics problem as "one for which the ultimate solution lies within the province of the profession" and a grievance as "any professional problem whose ultimate solution is within the province of the school board or other regulatory agencies." The difficulty with this classification is that it fails to recognize the complex nature of the Code and the impact of teachers' employers (as they exercise their legal authority to discipline teachers) on teacher ethical conduct. This view of ethics problems and grievances often leads further to internal conflict within associations that engage in advocacy of members in employment disputes while simultaneously judging their behavior under the standards of the Code.

In seeking solutions to these and other problems of implementation, to be described in detail in chapter 2, the Committee feels that the following four priorities must be observed:

1. Improving the association's capacity to independently assert its influence over the ethical behavior of its members
2. Increasing the association's influence on the authority of the teacher's employer to deal with employment matters which also relate to ethical standards
3. Improving the association's capacity to protect itself from internal organizational disruption deriving from the simultaneous application of conflicting advocating and prosecuting functions
4. Utilizing association levels (local, state, and national) for the various Code implementation functions which will prove most effective in protecting clients, the public, and the profession from unscrupulous practitioners, while assuring fair treatment of accused educators.

Some alternate routes to achieving these priorities and resolving the problems inherent in Code implementation are set forth in the next chapter. Those problem solutions which do not appear to be viable are discussed in some detail in chapter 2 and their limitations analyzed; the suggestions which appear to lend themselves to effective implementation, on the other hand, are merely suggested in chapter 2 and taken up in more depth in chapters 3 and 4, in the form of a model for local association functioning in two areas: professional processing of ethics complaints and administrative processing of ethics complaints.

The Committee's recommendations have grown principally out of the experiences of local, state, and national associations since the first formal Code implementation program was instituted six years ago. They are necessarily developmental in nature. While an absolute, straightline approach to ethics implementation might be desirable, none appears to be available at the present time because of the complex nature of the related problems. The Committee recognizes the difficulties of analyzing and evaluating the various suggestions and alternatives offered in the publication but hopes that it will provide guidelines for local associations which, as they are applied and refined, will lead to a more definitive method of handling professional ethics problems.

2 Identifying Problems and Examining Solutions

Local associations and other teacher representative organizations face a number of problems as they seek to implement ethical standards. Failure to recognize the problems or to deal with them effectively may have far reaching consequences for an association, in terms of its capacity to achieve its public purpose of protecting ethical values, its ability to preserve the confidence of its members, and its standing in the community. The consequences of this failure may include internal schism, costly lawsuits, and time-consuming indecision or chaotic individualism.

From its own experience, and from working with local and state associations, the Committee on Professional Ethics has attempted to define some rather prevalent problems and to arrive at proposed approaches to their solution. The purpose of this chapter is to set forth the problems and suggested solutions in such a manner that local association leaders and other teacher representatives will be able to identify them and see the implications for their particular situation. When necessary for clarity, the sections are introduced with a hypothetical fact situation which illustrates the nature of the problem being discussed. It is the Committee's hope that the problems and solutions are cast in such a way that they may be seen as relevant to all educators—to the needs of private as well as public schools; to higher education institutions; to urban and rural, and large and small school districts.

Problem—CODE STANDARDS RELATE TO EMPLOYMENT CONDITIONS

A teacher uses school mails, supplies, and duplicating equipment to produce and distribute materials for a local county board election. The matter is reported to the local association ethics committee as a violation of the Code and comes also to the attention of the superintendent, who subsequently recommends the teacher's discharge.

In contrast to fee-taking professionals like doctors and lawyers, most teachers are employed by a common employer. Reflecting the teacher's dual role as professional/employee, many problems which arise in the teaching environment may be classified as

predominantly employment matters or as predominantly professional concerns. For example, if a teacher is persistently negligent in submitting required attendance sheets, most would say this illustrates primarily an employment matter. If a professional driver education teacher in private practice exploits adult students for personal profit, the problem is surely a professional concern, since his work is of a private nature and not subject to control by his school district employer.

In many instances, however, matters of employment concern are also matters of professional concern, such as a teacher's misrepresentation of his professional qualifications. In these instances, the overlap of concern sometimes creates difficulty in defining authority and jurisdiction over the matter.

Our purpose in this problem section is not to discuss the strategies of an association as it deals with the employment disputes of its members. Nor will we describe here the problems arising from the behavior of a professional person outside of his relationship with the common employer. Rather, we will examine some of the problems that grow out of the mutual and overlapping interest and jurisdiction of the employer and the professional organization when a matter is both a professional and an employment concern, and explore alternate ways of resolving them.

Standards of teacher conduct

While members of the profession would rightly claim that the Code of Ethics is their exclusive concern, it is nonetheless true that the Code describes matters which are also frequently designated and handled by employers as conditions of employment.

Many boards of education hold statutory authority to discipline teachers for "unprofessional acts" or "conduct unbecoming a teacher" or "other just cause." Other standards may be spelled out more specifically in board policies. These become the device by which a board may discharge or otherwise discipline a teacher for behavior that it believes to be improper and that the profession would interpret as relating to ethical standards. Other ethical violations may be handled administratively, as when a principal or a superintendent reprimands a teacher for his actions. While such administrative handling may frequently be appropriate and competent, it sometimes is not and may induce a teacher, without just cause, to adjust his behavior, to resign, or to take other action to avoid administrative restraint. Experience indicates, in any event, that many violations of the Code of Ethics (while not usually specifically identified as such) are treated as employment matters,

subject to the full range of disciplinary measures available to the employer.

The capability of a board to discipline teachers for what it considers to be improper behavior poses a pervasive threat to teachers, in terms of the broad powers afforded boards in vague and undefined statutory language. Terminology such as "conduct unbecoming a teacher" provides no identifiable standard which would inform a teacher of what behaviors he should avoid or in what ways he may behave safe from punishment. Even where some proscribed behaviors have been made explicit in board policy, the board still has an "open end" to define other acts as "unbecoming" or "unprofessional." Further, the employer is free to legislate or define a standard *after* an alleged unprofessional act has been committed. Whether a board uses this opportunity to apply its own values to the definition of standards or not, the very existence of its capability to do so has a chilling effect on teacher behavior. Teachers are well aware of their vulnerability to punishment but are unable to protect themselves by conforming to a defined and recognizable standard. Teacher associations should therefore seek, as a priority, to limit the power of boards of education to define "unprofessional conduct" arbitrarily, and to assure teachers that conduct regarded by the profession as appropriate will be protected. Some possible routes to achieving these goals are examined below.

First Alternative:
Board delegation of power to punish

It has been suggested by some that boards of education or college trustees might be willing to relinquish to the profession their authority over teacher or professorial behavior of an ethical nature—that when a complaint is raised about a teacher's conduct which pertains to behavior described in the Code, the employer would not act on that complaint, but would refer it to the teacher's professional association. While such an approach might appear desirable, it ignores the legal responsibility of a public employer to protect the public's interest. Boards hold the powers they do because they represent the public, and the public is vulnerable to the acts of teachers. Moreover, boards are accountable to the public in a manner that private or even quasi-public organizations may never be, and the courts are not likely to allow a board to delegate its legal responsibility for the discipline of teachers to a teachers' organization. A board might agree to do so, but a parent who was

dissatisfied with that action might bring a legal suit against the board and possibly win a favorable judgment. Many suggest that similar constraints would be experienced by private educational employers, who also generally must win the approval of a constituency for their actions.

SECOND ALTERNATIVE:
Advisory delegation

A modification of the above approach is to have the association exercise advisory power with respect to the board's authority. For example, the employer might enforce the Code as it is interpreted by the profession. This suggestion appears to alleviate some of the difficulties of the above plan, but it still may be judged to be an improper delegation of the board's power. In some instances and in administrative law, when a commission's authority includes the holding of hearings and the development of proposed findings, the governmental agency adopts the proposed findings. Its differing view would not usually be seen as sufficient grounds to overturn the commission's recommendation.

This approach is very close to the one suggested above and might, therefore, be expected to fail for the same reasons. A further weakness is that it may leave the teacher without organizational representation, if his association is called upon to act as a neutral in a dispute between him and his employer.

THIRD ALTERNATIVE:
"Tossing the hot potato"

The first two alternatives described variations of how an employer might relinquish to the profession jurisdiction over teacher behavior that is also of an ethical nature. A third approach to reducing conflict over standards is for the profession to give up some of its discretion to act by amending the Code to exclude those standards which commonly appear in employment policies in educational institutions.

This approach fails because, instead of eliminating conflict, it merely shifts the conflict to another locus—to personnel policies, school district regulations, state law, or wherever the standard may be described. The values advanced by educators, such as academic freedom, continue to exist, whether expressed in the Code, in some other policy, or not at all; and conflict will only be erased as the values are attained.

Furthermore, such a surrender of jurisdiction on the part of the profession thwarts one of our stated purposes of a code—"the voluntary assumption of the obligation of self-discipline beyond the requirements of the law," as a signal to the public that the profession is concerned about ethical standards. Educators are persuaded that the professional qualities inherent in the values they have expressed in the Code are of such importance that the profession must publicly embrace them. Moreover, some, if not many, of the standards would not be asserted by an employer. Ethical values could, therefore, easily become subjugated to employment values.

Finally, the removal of employment-related sections from the Code would leave no one with authority to protect the profession's values among educators who are engaged in a private, fee-taking practice. In that instance, the school district employer (if any) would generally be absent jurisdiction, and so would the profession. For this and the other reasons mentioned above, the Committee feels that this approach is not a workable solution.

Fourth Alternative:
Negotiating the Code

Another solution that has been suggested as viable is for the association to negotiate the employment-related sections of the Code with the teachers' employer. Under this agreement, the employer would be responsible for enforcing those sections of the Code, and the association's role would be to protect teachers from inappropriate discipline through the use of a grievance procedure.

This approach threatens the loss of professional consensus about ethical standards, and places in the hands of the employer administrative control over the profession's Code of Ethics.

The Code does not lend itself well to the process of bilateral negotiation, which by definition implies compromise. This, together with varying interpretations of Code sections by multiple lay boards, presents a danger to the maintenance of a universal standard.

The second problem posed by negotiation of the Code is that it assumes competent administrative implementation and provides no remedy when an administrator and a teacher combine to act unethically. In such a case, the teacher is not likely to grieve, nor would the administrator take an action against the teacher; the grievance procedure therefore affords no resolution in this instance. Furthermore, the association is not in a position to move

independently against either of the two violators, since when two bodies negotiate a matter of mutual concern, they generally agree to solve problems bilaterally, thus relinquishing their discretion to act unilaterally in that area. Negotiation of the Code should therefore not be seen as an effective route to solving the problems of overlap between Code standards and employment conditions.

FIFTH ALTERNATIVE:
Negotiating the relationship

It is clear, on the one hand, that employers of teachers are not generally free to delegate their legal authority over teacher conduct to a private, voluntary organization. It seems equally true, on the other hand, that the profession is not in a position to abdicate its responsibility to a governmental agency. It remains, therefore, for governing boards and teacher organizations each to recognize and accept the legitimate interest of the other in ethical values and to seek by mutual agreement to set up conditions which permit each to assert separate and joint interests in a nondisruptive manner.

Suggested approaches to working with employers to facilitate the assertion of mutual interests are:

1. Cooperation to assure that employment conditions and Code standards do not represent conflicting values
2. The voluntary agreement by the employer not to require behavior of teachers which is in violation of their Code of Ethics.

(These approaches will be discussed in chapter 4.)

If mutuality fails to achieve the desired goals, however, the matter is of such import that it warrants unilateral and dramatic action by the organized profession to assure that its values will be safeguarded.

Problem—ADMINISTRATIVE COERCION OF TEACHERS

A teacher is covertly threatened with discharge if he cooperates in a state association investigation.

A sensitive problem faced occasionally by local associations is how best to assist an educator who is required by his employer to violate the profession's Code of Ethics. In the example above, the educator has an obligation, under Principle III, Section 5 of the Code not to "refuse to participate in a professional inquiry when

requested by an appropriate professional association." Other examples which might be cited are a teacher who is required to present only one side of a controversial issue, thereby denying students access to varying points of view, or a principal who is ordered to discriminate improperly in his treatment of ethnic groups within the school.

In situations such as these, an association is often unable to deal with the matter through the ethics channel. Frequently, the administrator is not a member of the association and is therefore not subject to organizational discipline; the teacher, while he may be a member, should generally not be vulnerable to punishment in such instances. Although his act is a violation of the profession's Code, the element of coercion will usually provide sufficient mitigation to make punishment unreasonable. (It should be noted that an educator who is subjected to coercion by his employer will probably safeguard himself by reporting the problem to his association and seeking assistance.)

Administrative solution to administrative problem

Since the professional channel may not be effective in this situation, the association must find ways of using the institutional devices of the school system or college to bring about resolution. Suggested routes, to be described in chapter 4, include: a grievance procedure; litigation; and appeal into the administrative line.

Problem—THE LOCAL ASSOCIATION: JUDGE OR ADVOCATE?

A teacher uses his position in the classroom to promote a political candidate through the dissemination of campaign literature and open advocacy of the candidate. Parents in the community and other teachers are enraged at the teacher's behavior and complain to the principal. The principal informs the teacher that if he does not refrain immediately, he runs the risk of discharge action. The teacher appeals to his local association for support in the grievance procedure, admitting the alleged behavior but claiming the right to act as he did.

Local associations frequently have faced a conflict when they have tried to carry out simultaneously the dual functions of defending and judging a member. The problem has intensified over the past few years as teachers have asserted their desire to establish a collective relationship with employing boards, in which they jointly negotiate the policies and rules by which teachers and

boards will be governed in the employment relationship. Under such an arrangement, the roles and relationships of the employer and the employees' representational organization may be defined in statute. Generally, the employer is obligated to administer and abide by the agreed-on policies in a just and efficient manner, and the recognized representative of teachers is responsible to continuously provide fair representation in behalf of employees in the negotiating unit.[4] Similarly, in nonnegotiating associations, members frequently expect that, in return for their payment of dues, they will receive support and advocacy by their professional organization when they are involved in disputes with their employer.

Conflicting roles

While association representational responsibilities are frequently defined by statute and carried out by negotiating and grievance committees, another body of the association has typically set up a standard (the Code) and proceeded to judge and punish the behavior of its members under that standard. Conflict has sometimes resulted when a member's request for assistance has related not only to a dispute between him and his employer but also to a section of the Code. In this event, an association grievance committee has sometimes supported and defended a teacher in the employment dispute, while the ethics committee, at the same time and for the same act, has prosecuted a charge against him. On some occasions, the conflict has brought about internal disruption as a result of the divisive power struggle between two opposed committees; at other times, conflicting actions have placed associations in an embarrassing public position. Many local leaders are expressing more and more a desire for clarification as to what their role is and should be.

First Alternative:
"Ducking" action

A temptation, when ethics-related employment disputes arise, is for the association to seek to avoid making a decision—to let the employer handle the matter, or to refer it prematurely to the state association—in an attempt to escape the conflict. The former approach threatens to undermine the confidence of association members; the latter assumes a discreteness between the state and affiliated local associations which is not perceived by the public. They see the profession as a unity rather than as disparate elements. Both approaches reflect an abdication of the association's

responsibility and ignore the fact that a decision not to act *is* a decision—a decision which may, moreover, signal to association members and the public that the association has no regard for ethical standards.

SECOND ALTERNATIVE:
Single decisions from a single committee

It is imperative that local associations develop mechanisms for reaching competent decisions in matters of overlapping employment disputes/ethical violations. No easy route is available. The association's course will necessarily depend upon the answers to a number of questions: Does the accused educator admit violation of the Code? Does he believe that he is innocent of both the ethics violation and the contractual violation? Are the ethical conditions and employment conditions sufficiently overlapping to warrant regarding them as the same? Is the teacher requesting association assistance in processing a grievance? How serious is the alleged ethical violation? Is the employment punishment applied warranted by the alleged misconduct?

While the answers to such questions will necessarily influence an association's decision as to its course of action, a single association committee with responsibilities for carrying out both defending and judging functions may provide a procedural assurance that the association will not pursue conflicting courses. Such a committee would be aware of the relevant facts of a case at the outset and be informed about a pending grievance and thus able to make a decision regarding the manner in which the association's resources should be utilized in that case. Some of the factors on which the committee will base its determination are described in chapter 4.

Problem—CODE STANDARDS RELATE TO MATTERS OF LAW

A principal requires the teachers in his school to separate the students in their classes according to race. Several parents complain to the superintendent, who informs the principal that his contract will not be renewed. One parent also files a complaint with the local association, alleging that the principal (an association member) has violated the Code.

The first part of this chapter discusses the problems which arise from the inclusion in the Code of standards which may also

be described in board policy or contract as conditions of employment. A parallel problem is that some Code sections relate also to matters which may constitute an infraction of the law.

When an association receives a complaint of Code violation which it recognizes as relating to a matter of law, it is faced with some questions, the answers to which will influence the course the association decides to pursue. Questions to be dealt with include:

1. Has the complainant instituted or does he intend to institute legal proceedings?
2. Is the subject matter of such legal suit and of the ethics complaint overlapping?
3. What are the association's relative obligations to its members, the public, and the accused educator?
4. How serious is the alleged infraction?

Some of the ramifications of the questions are discussed below.

Institution of legal proceedings

By and large, if no litigation is planned, an association may make its determination as to its course of action on the basis of other considerations. (However, it should be noted that where a violation represents a serious breach of law, the association may consider whether it has an obligation to report it to the appropriate law enforcement agency and/or the teacher's employer.) If litigation is planned or proceeding, the association should deal with the following questions.

Overlap of legal and ethical charges

The association's course of action in an ethical/legal matter may be determined by the degree of overlap between the two charges. If there are merely two simultaneous charges against the same individual that relate only in the most minimal sense to the same fact situation, the association will probably not regard the legal proceedings in arriving at its decision. If, however, the content of the two charges is substantially or totally the same, it may feel this sufficient grounds for postponing its action.

Association's responsibilities

Other factors which may influence an association's decision are its obligations to its membership and to the public. An association exists in a community and strives to maintain a sense of trust between itself and the public, so that the community may have confidence in the integrity and honesty of the association. The

flagrant or continued violation of the Code by an association member represents a moral breakdown in the professional society and may impugn the integrity of the association in the eyes of the community. Furthermore, the association has a responsibility to preserve the reputation of its members and their respect and trust in the association; most members will not tolerate the condoning of unconscionable behavior by an outlaw of the profession.

Neither can the association overlook its obligation to its individual member, however, and an accused educator will frequently call on his professional organization for assistance. The association must make a decision, based on the facts of the case and its varying obligations, to pursue one of the following courses of action:

1. Assist the member, including active support of his substantive position
2. Take the view that every teacher has a right to his "day in court" and support him to the extent of paying his legal fees but not advocate his right to act as he did
3. Stand apart from the proceedings and remain silent on the issue
4. Conduct its own proceeding and apply professional discipline
5. Appear in court and testify against the teacher.

Seriousness of the infraction

The range of possibilities for action is wide, and the association's decision will be based on the variety of intertwining factors that have been described. Also relevant, however, is the magnitude of the misconduct. If the violation is extremely serious or very minor, the association's course is relatively easy to determine. If a teacher, in a flagrant, irresponsible, and reprehensible way, violates both the Code of Ethics and the law and asserts his right to act in a way with which other educators disagree, the association can be expected to refuse to defend him and, furthermore, might testify against him. If, on the other hand, the teacher is accused of misconduct for an act which the association deems to be proper, it would probably extend assistance to him to the limits of its resources, in order to clear him of the charges. In between these two extremes are many gradations where the association must carefully exercise its judgment. The same criteria may be applied as are discussed in chapter 4 with respect to determining whether or not to support a member's grievance involving ethical standards.

It should be clear that we are discussing here only matters of law which are also spoken to in the Code of Ethics. While an edu-

cator found guilty of a felony or serious crime by a court of law might be subject to organizational discipline under an association bylaw, such a matter would not usually be considered appropriate for disposition on ethical grounds.

Suspension of ethics proceeding

If, after weighing relevant factors, an association decides to pursue an ethics complaint that is also the subject of litigation under a substantially similar charge, it may consider suspension of its action until legal proceedings have been terminated. Many would feel that such delay might help to prevent a possible miscarriage of justice. It is recognized that an important element of effective Code enforcement is the prompt processing and disposition of complaints, and that in some circumstances an educator may feel advantaged by an early decision by his professional association. Generally, however, such problems as the following may arise when an ethics hearing is held simultaneously with a legal proceeding on the same matter:

1. A teacher who is accused in both forums might not wish to use testimony in the association proceeding that could incriminate him in the litigation; in fact, his attorney might advise him not to do so. In such a case, the association could be forced to make a decision on the basis of insufficient evidence.
2. The association hearing might prejudice the outcome of the litigation. A jury that is asked to decide an issue, knowing that it has already been decided against the individual by his peers, could be influenced to make an adverse decision also. (This applies principally to the rendering of a decision rather than to the whole proceeding.)

It would generally appear to be a wise practice in such situations to defer the processing of ethics complaints until pending litigation (but not necessarily exhaustion of all appeals) has been completed. Two cautions should be observed, however:

1. There is a strong temptation for associations to find bases for avoiding association recognition of a problem or for allowing someone else to assume the burden—maintaining that it lies within the jurisdiction of the employer or the courts. Associations must face up to this tendency and recognize that, if it becomes excessive, the profession stands to lose its status, in the eyes of its members and the community, as having an

urgent concern about ethical standards and the trust relationship with the public.

2. The association must guard against the possibility that an educator may use pending litigation as an excuse to delay indefinitely the processing of an ethics charge. When prosecution of a pending civil or criminal case is discontinued for all practical purposes, even though there has been no actual order of dismissal, the profession's disciplinary proceeding should not be deferred longer.

One other matter may be mentioned here. By and large, teacher associations, as private organizations, do not exercise powers to subpoena, to declare a person in contempt, or to swear witnesses, which are enjoyed by civil and criminal courts and even administrative agencies. While the association may be seen to possess limited subpoena power over its members as it enforces Principle III, Section 5 of the Code, this provision generally would not have any effect on nonmembers. In some circumstances, when it appears that an association cannot proceed competently without the powers exercised by the courts, due to its inability to obtain significant witnesses and testimony, it may decide to use the record growing out of the court proceeding as the basis for its decision.

The task of determining a course of action in ethics matters which also relate to a violation of law is not an easy one. A commitment to justice and careful analysis of the relevant factors will assist local associations to make competent decisions.

Problem—INACTIVITY OF THE PROFESSION

Teacher associations (local, state, and national) are sometimes accused of not processing many cases of ethical violation. The implication is that the organized profession is not really interested in regulating the ethical behavior of its members but that it seeks instead to protect them from punishment. The associations' response, on the other hand, is that the diminutive case rate stems not from an internal machination to be unprofessional, but from the tendency of parents, students, and sometimes teachers to direct their complaints to schoo and college administrative officers.

Most violations of the Code occur in the day-to-day activities of the teacher in the classroom. They are witnessed by children, who typically tell their parents what has occurred. In seeking redress, parents generally appeal to the principal, the superintendent, or a board member.

The teachers' employer (board of education or governing

board) has legal authority to judge teacher behavior and the power to recruit, hire, promote, transfer, and discharge teachers. The board also has the capability to place administrative staff in school buildings to execute its authority. In addition, the board's political and statutory status places it in a clear position of accountability to the public. For these reasons, it must be assumed that a large number of parents and students will complain to the public agency (the board) rather than to the professional organization.

Where the action is

The myopic belief that ethical conduct is the exclusive concern of the profession has already been discussed. If it is to increase its influence on teacher behavior, the professional association must, as an imperative, seek devices which will give it relevance in the employment setting, such as the use of a grievance procedure. (See pages 47-49.)

Corollary solutions

An important factor in increasing the flow of ethics complaints into professional channels is the association's visible demonstration of its overriding concern about professional ethics. Activities in Code dissemination and interpretation, although they may appear to have less impact than enforcement measures, can have a direct effect on the association's capacity to attract cases by indicating the association's desire and intention to be ethically relevant.

A problem that is sometimes raised in this regard is that, in contrast to the board's power to affect employment, the association's influence over the ethical conduct of its members has sometimes been weak. For example, a teacher disciplined by his professional organization may still continue in employment, either in that district or in another. The rewards of violation may often appear more attractive to a teacher than the penalties. This situation is changing, however, as associations are more carefully designing specialized services and benefits to members which are not available to nonmembers. This trend, as represented by such provisions as insurance packages and other economic benefits, has some clear implications for ethical conduct. As such benefits make association membership a more and more desirable property right, the possible penalties for ethical violation will become a greater deterrent to teacher behavior that the profession considers improper.

In summary, the association is likely to receive more cases of ethical violation as it shows itself more visibly concerned about ethical standards and as it increases the attractiveness of asso-

ciation membership and the disadvantages of nonmembership. In addition, it must seek for itself a role through which it can influence the processing of ethics matters in the institutional setting.

Problem—LACK OF IMPARTIALITY IN LOCAL ASSOCIATIONS

A difficult problem for most local associations, particularly the smaller ones, is the test of impartiality and disinterest in the processing of ethics complaints. In many locals, ethics committees are required to pass judgment on the conduct of teachers with whom they must maintain a professional, and sometimes personal, relationship. The burden of objectivity in such situations is too great to be considered reasonable. Even if objectivity could be achieved, the possibility of public or member suspicion of favoritism or of persecution is always present. When charges are not sustained or only minor discipline is applied, some may feel that the association is interested only in protecting its members; when discipline is more severe, others may suspect the organization of striking out against a teacher. Furthermore, division may be created in the association as members "choose sides."

State rather than local

A possible route to avoiding such conflict is to remove the judicial function entirely from the local association and to provide procedures whereby the local transmits complaints to the state association for hearing. Disciplinary hearings would be conducted by the state ethics committee, which generally would have a greater capacity for objectivity and neutrality. Approaches that the state committee might use to facilitate the timely processing of complaints are suggested in chapter 3.

Problem—DEALING WITH MINOR INFRACTIONS

A teacher takes a day off from school to settle on a house he is buying. He believes personal leave should be allowed for such business, but since it is not granted in his district, he uses sick leave.

Frequently, ethics committees receive complaints about the conduct of a teacher which is of concern to them but which represents a minor infraction of an isolated nature. In such circumstances, the committee is typically faced with the choice of dismissing the charge or of holding a full-scale disciplinary hearing. While

the matter may not appear sufficiently serious to warrant the institution of a time-consuming and costly proceeding, dismissal of the case might imply that the committee condones the teacher's conduct and could subject the profession to criticism. A complainant might conclude that the association is not interested in the ethical behavior of its members.

Admonition technique

A possible approach to this problem is similar to the one that is being recommended by the American Bar Association for its disciplinary agencies.[5] It provides that the disciplinary body (state ethics committee) may administer informal admonitions in disposing of complaints involving instances of minor misconduct, without conducting an ethics hearing. Such a procedure would be subject to the accused educator's right, after receiving notice of an admonition, to request a formal disciplinary proceeding.

There are, of course, other problems which teacher representative organizations face as they seek to implement ethical standards, which have not been mentioned here. In the Committee's view, the ones discussed are the most common and the most serious in terms of their possible effect on the profession's capacity to protect its interest in ethical values. If these problems can be dealt with effectively, the Committee believes that the status of the profession will be advanced, both in the eyes of its members and the public.

3 Professional Processing of Ethics Complaints

The organized profession, representing educators in varied occupational asignments—classroom teachers, administrators, college professors, guidance counselors—has, through the formulation and adoption of a code of ethics, expressed its concern about ethical values. Members of the profession, collectively and individually, have further committed themselves to enforce the standards they have endorsed in the Code, in order to preserve their own integrity and to protect the public against unethical practitioners.

Some have argued that the formalized (sometimes statutory) devices available to the teachers' employer for disciplining teachers are preferable to the devices of the profession. Their reasoning is that the employer, because of his ultimate capability to discharge the teacher, has more potential power to influence the teacher's behavior. They contend, further, that the employer has the capacity to protect himself from harm in disciplining teachers, whereas an association that holds an ethics hearing and expels a member may be vulnerable in the event of a costly legal suit.

WHOSE INITIATIVE: EMPLOYER OR ASSOCIATION?

Analysis of the implications of such an arrangement reveals its flaws. Educational employers have many concerns which are identical with those of educators, but they have in addition some differing concerns. Lortie points out that the primary function of governing boards is held to be fiduciary and that board members are intensely vulnerable to political pressures from various community power groups.[6] Getzels and Guba have demonstrated that principals, on the other hand, are confronted with the demands of a central office staff which expects them to adhere to policies laid down by the school board and superintendent.[7] Gross, Mason, and McEachern's study reveals that there is widespread disagreement about the role of the superintendent in hiring, firing, and promoting of staff; selection of textbooks; handling of grievances; and determination of the school budget.[8] As boards of education and college trustees assume responsibility for control of teacher ethical conduct, therefore, their differing concerns may be reflected in the absence of some values which are important to the orga-

nized profession and to the public. Neither the board nor its administrative officers, for example, may include among its priorities such matters as academic freedom or a teacher's problem with an individual child.

A further problem with relinquishing authority over teacher professional conduct to employing boards is that some ethical violations may occur outside of the employer's authority. We refer to an educator's involvement as a private entrepreneur in professional pursuit for profit, such as a teacher who conducts private foreign study or tour programs for students, or one who engages part-time in selling encyclopedias. Misconduct in these settings probably would not be within the purview of a board of education, and an injured student or parent might have no source of assistance in that instance if the association were without jurisdiction.

For these reasons, the Committee on Professional Ethics suggests that the organized profession must exercise an independent capacity to:

1. Evaluate the performance of its members in respect to their adherence to the tenets of the *Code of Ethics of the Education Profession.*
2. Protect the profession and the public against the unethical acts of a nonconforming educator through the application of appropriate disciplinary measures.

A priority for local associations is to devise a structural and functional model which will be a vehicle for achieving those goals. The model described here represents the Ethics Committee's view of a viable approach for most locals. It includes some of the problem solutions outlined in the preceding chapter. Since it is recommended that disciplinary hearings be conducted by the state association, it also describes some of the responsibilities of the state ethics committee in regard to Code enforcement.

ROLE OF THE LOCAL ASSOCIATION

Bylaw provision

If an association intends to discipline its members for unethical conduct, it is important that it include in its constitution or bylaws a provision calling for adherence to the *Code of Ethics of the Education Profession* as a condition of membership. Such a statement informs members of the association about what is required of them to be in good standing, and it is also necessary from a legal standpoint if the rule is to be enforced. Furthermore,

the local association constitution or bylaws should contain a specific provision for the application of organizational discipline by an appropriate body, such as the Professional Rights and Responsibilities (PR&R) committee or the executive committee on the recommendation of either the PR&R committee or the state ethics committee.[9]

PR&R committee

To carry out a local association ethics program, it is suggested that a PR&R committee be appointed and vested with appropriate authority. It is recommended that this committee also be responsible for receiving and processing teacher grievances.[10]

Functions of the committee

To protect the profession's interest in assuring that educator ethical responsibilities are carried out, the local PR&R committee operates on four levels: Code development, Code dissemination, Code interpretation, and Code enforcement. Although these functions frequently overlap, for purposes of clarity they are described separately.

Code development. The *Code of Ethics of the Education Profession* has been adopted by the National Education Association, by NEA affiliates in all 50 states, and by approximately one-half of the 9,000 or so affiliated local associations. As the code of the profession, it is developed collectively by members of the profession. The NEA Representative Assembly has provided for continuous review of the Code (at least once every five years) by the national committee, and local PR&R committees have the opportunity to submit recommendations for amendment.

The local PR&R committee, because of its constant close association with problems as they occur, is in a particularly good position to detect weaknesses and omissions in the Code and to bring them to the attention of the national committee. The local is discouraged, however, from writing its own code. The value of universal standards has been discussed, and the problems that might derive from some possible 9,000 codes of ethics for teachers are patently clear.

Code dissemination. The local PR&R committee has two obligations in disseminating the Code:

1. To advise teachers as to what behaviors are proscribed and prescribed in the Code
2. To educate the public (students, parents, board of education,

community) as to the standards which teachers have agreed to uphold.

Obligation to teachers. The important thing to remember about informing teachers of Code standards is that it is unfair to enforce a code against a group that does not know its provisions. Teachers must be advised in advance of what types of behavior may be punished under the Code and should therefore be avoided. It should be clear, moreover, that adoption and distribution of a code is an insufficient basis for insuring ethical conduct. Teachers must be educated about the Code and its meaning, and the best method of education is consistent enforcement. If a teacher functions in a system of ambivalent values—where a certain type of behavior is advocated but a different behavior is rewarded—a code of ethics will be meaningless. In the context of the necessity for enforcement, some local associations have found the following types of activities valuable adjuncts in educating teachers about Code standards:

- A copy of the Code distributed to every teacher in the district or college
- Occasional meetings where the association recognizes a teacher or group of teachers for an outstanding professional contribution that has advanced the association's interests, or for a courageous act which has had beneficial results for all teachers
- Discussion (or role play) of some phase of the Code at association meetings
- Inclusion of the Code and a rationale in the teachers' handbook
- Display regarding some aspect of the Code on faculty bulletin boards (changed regularly)
- Discussion of a Code section in the association newssheet
- Reference to the Code in association resolutions
- Occasional association meetings devoted to professional ethics (should be lively and interesting, not preachy)
- Framed copy of the Code in the teachers' lounge and classrooms.

Obligation to the public. The Committee's responsibility to inform the public is based on the fact that most citizens are unaware of the provisions of the Code, if not of the existence of the

Code itself. For this and other reasons, the public usually takes its complaints to the teacher's employer. If citizens are to be encouraged to bring their complaints to the profession, they need to know of the standards by which teachers have agreed to be judged by their peers and the channels for raising a complaint. Perhaps even more important, the association itself must be clear as to how it wishes to pursue these matters, both in respect to its internal processes and in respect to the processes of the employer. Frequently, the lack of understanding on the part of the citizen is a product of a lack of understanding on the part of the association as to the procedures it will follow. Associations should therefore determine the course they will pursue and be sure that appropriate persons are knowledgeable regarding the role they are to play.

Assuming the association has clarified its own procedures, some suggested ways of making the public more aware of the profession's concern for ethical standards are:

- Occasional meetings with specific groups to inform them of their rights in relation to teacher behavior, the standards to which teachers have agreed, and how to seek resolution of a complaint. Such groups might include student councils, the board of education, PTA's, and civic groups. (An opportunity to optimize the effectiveness of such meetings often arises following the disposition of a case, when public interest is high.)
- A copy of the Code sent to newspaper editors with a news story
- Newspaper editorial or feature article during American Education Week or Public Schools Week
- Inclusion of the Code and its significance in a pamphlet for PTA's, service clubs, civic groups, etc.

Code interpretation. Interpretation of specific sections of the Code is carried out primarily in two ways:

1. Individuals raise hypothetical questions about the ethical implications of a particular type of behavior, and the committee issues an opinion (either informally to the individual or formally to association members through an association publication or other means).
2. The committee takes an action, and its decision becomes an interpretation of the Code, growing out of the enforcement function.

The local association will be involved chiefly in the kind of interpretation described in (1). Interpretations growing out of enforcement will be predominantly carried out at the state and national levels.

It should be recognized that diverse interpretations may produce a meaningless Code section. If a local committee does render a decision, it should exercise extreme caution and should, wherever possible, reinforce its decision by citing precedential opinions by state and national committees. (The Committee on Professional Ethics has rendered formal opinions of many Code sections in specific fact situations, which are available in printed form.[11]) When a diversity of interpretation of a Code section does exist, the conflicting decision should be subject to appeal.

Code enforcement. As discussed in chapter 2, there are many difficulties in seeking to carry out all enforcement activities at the local level. The Committee believes that removal of the disciplinary hearing process to the state level will accomplish the following purposes:

1. Objectivity in judgment—protecting the rights of the accused to an impartial forum, and protecting the association from public suspicion of bias
2. Uniformity in discipline—affording a greater assurance that standards and procedures used will be applied equally to all educators
3. Greater competence—a state association, with its permanent staff, broader funding base, and wider experience can provide greater expertise in conducting hearings.

Complaints

The recommendation of the Committee for state conduct of hearings does not imply that the local association has no role in the enforcement process. A teacher (or parent or student) who believes that his rights have been violated with respect to an education-related matter cannot be expected to go directly to the state association for assistance. Many would be discouraged by such a requirement. When an individual has a complaint, the PR&R or grievance representative at the building level is in an excellent position to counsel with the aggrieved individual and to determine whether the complaint relates to a violation of a right described in contract or to a violation of the Code of Ethics, and to deter-

mine the channel in which it should be processed. (Of course, an individual is not prohibited from raising his complaint directly with the PR&R committee or with the association president, and many, in fact, do follow these routes.)

Membership required? It is fairly common for an association to require that a complainant be an association member. Considering the profession's responsibility to the community, as well as to students, such a requirement is unreasonable. Anyone who believes that his rights or interests have been violated by an educator should have the right to file a complaint with the educator's professional organization. Moreover, the association has a responsibility in its own behalf to process a complaint, even for a complainant who is unwilling to pursue a matter. To refuse to do so might appear to signify that the association is not seriously concerned about ethical standards.

Complaint forms? Some associations require that complaints be submitted on a special association form in order to be considered. The form sometimes requires detailed knowledge of the Code and analyses of events that could overwhelm an inexperienced complainant. The process of entering a complaint may be further formalized by requiring an oath to its truth before a notary, cosignatures by one or more members of the association, or endorsement by a committee or governing board of the association.

By contrast, some associations have virtually no procedural requirements for entering a complaint, and will initiate action on the basis of unknown or unidentified complainants and with no assurance that evidence to substantiate the complaint can be obtained.

A third approach is to distinguish between the process of bringing complaints to the surface and the process of taking action upon complaints, with greater obligations placed upon the complainant as the matter moves from the informal to the formal stage. Also, an association may establish basic procedural obligations for the entering of complaints, but simultaneously allow the waiving of some requirements for sufficient cause.

One of the purposes of requiring highly structured processes for the entering of a complaint is to reduce harassment through frivolous and unsubstantiated complaints filed against an educator. In some instances, however, a complainant may interpret such requirements as implied threats of retribution or of counter charges of malice should any of his allegations prove to be inaccurate, and he may forgo the filing of a complaint. Other individuals feel unsure of their ability to state their complaint adequately and

to understand the applications of the Code and may be reluctant to put a complaint into writing for these reasons. To require co-signatures or endorsement by a committee or governing body of the organization may have the effect of denying access to justice to an unpopular complainant or one whose cause is just but either controversial or out of favor with the majority of the group.

An accused educator, on the other hand, must be assured that his rights of due process will be safeguarded. To be required to defend himself against an unidentified complainant is unjust. He should be permitted to face his accuser in a hearing, to hear the evidence against him and respond to it, and to cross-examine witnesses. The association also deserves the assurance that it will not be embarrassed by processing cases for which witnesses and evidence evaporate when the time comes to confront the accused.

Freedom to vary. The Committee recommends that the initial stages of receiving a complaint and inquiring into it to determine whether cause exists to move into more formal action be conducted without a firm requirement that signed statements be submitted. Generally, when the point is reached where a decision must be made whether to proceed, the Committee recommends that the complaint be formalized, with the assistance of association counsel, if necessary, and signed by the complainant. However, under appropriate circumstances, these formalities may be relaxed. The association may require the presence of one or more of the following criteria to grant such a waiver:

1. It is likely that the complainant may be subjected to inordinate intimidation or reprisal if he is identified.
2. The complainant agrees to testify and to be identified at a later stage in the proceeding.
3. Sufficient evidence exists to substantiate the complaint without the testimony of the complainant.
4. The allegation involves misconduct of a flagrant nature which could be seriously damaging to the profession and therefore should not be ignored.

The Committee's recommendation allows for a degree of flexibility in the requirements for complaints that should protect the interests of both complainants and accused parties, and also prevent the undue repression of legitimate complaints by procedural barriers.

Informal disposition

Just as informal solution is sought, where possible, in grievance disputes that relate to employment matters, similarly it is valuable to consider informal routes of adjustment where a professional (or ethical) dispute exists. The PR&R or grievance representative again is highly qualified to explore the potentialities of such informal resolution, as well as to determine whether the matter is so serious in nature that it should be moved into a formal channel as expeditiously as possible.

Probable cause

If a matter appears to warrant formal procedures for resolution, it is important that, prior to referral to the hearing body, probable cause for action be established. Some committees will continue to refer complaints to the state association at this stage; others will, as they presently do, process the complaint through the ascertainment of probable cause before transmitting it to the state committee. Whichever body finds cause, its obligation is to determine that evidence exists to provide substantiation in behalf of the complaint raised. The major purpose of this safeguard is to protect potential accused parties from harassment through frivolous complaints that are unwarranted and without basis in fact. Finding of probable cause may be done formally or informally; it does not have to imply fact-finding interrogation of both parties; it may be based on the testimony of the complainant or a witness or a document. The burden of the committee responsible for establishing probable cause for action, however, is to be relatively certain that a *prima facie* case does exist (that is, that the evidence obtained from hearing one side would persuade, although it is recognized that evidence from the other side may convince otherwise).

The Ethics Committee recommends that, at this point in the processing of the complaint, jurisdiction (if not already transferred) be shifted to the state association. Its role is described later in this chapter. Following the completion of the state association's proceedings, its ethics committee transmits a record back to the local PR&R committee. If the local committee is vested with the appropriate authority, it may apply the discipline recommended (if any) by the state association. If the authority rests with the local association executive committee, the PR&R committee may make a recommendation to that body, based on the state committee's findings.

Structure and makeup of committee

An important factor in an association's effectiveness in asserting its independent interest in ethical standards is a sound committee structure. A suggested organizational pattern for local associations follows:

Size and term of office. Local PR&R committees often desirably range in size from 7 to 14 members, depending on the size of the association. Larger committees run the risk of becoming too unwieldy for decision-making purposes. A suggested term of office is two years, renewable once by appointment. Since newly appointed members usually must learn from more experienced members the standards to be applied in evaluating complaints and determining their disposition, it is recommended that terms be staggered.

Basis of membership selection and method of appointment. Members of the PR&R committee should exemplify high professional and ethical standing, and should have had effective current or past experience in upholding teacher rights and responsibilities. Committee membership should, as far as possible, represent a diversity in years of experience and in occupational assignment. It is recommended that committee members be appointed by the association president, with the consent of the legislative body. (The committee does not initiate association policy and should therefore not be subject to the political influences which surround elective offices.) Usually, members of the committee select their own chairman for one-year, renewable terms of office.

ROLE OF THE STATE ASSOCIATION

Bylaw provision

Just as the local association should be legally protected in disciplining its members, so also should the state association be safeguarded, through similar bylaw provisions.[12]

Ethics committee

At the state level, the functions of the ethics committee may be separate from those of the PR&R committee. In any event, provision must be made for the separation of investigation and prosecution functions from judging functions. The body which hears

837

and decides complaints must be seen as neutral and without prior knowledge of the fact situation.

While the state ethics committee also carries responsibility for such functions as disseminating and interpreting the Code, our discussion here will be limited to those ethics functions which relate directly to the local association, i.e., the processing of complaints referred by the local PR&R committee for a professional hearing.

Perfected complaint

When a *prima facie* case has been established and referred to the state ethics committee for resolution, the committee's first obligation is to assist the complainant in perfecting his complaint and in identifying pertinent evidence. The committee then transmits the perfected complaint to the respondent party, indicating the allegations of violation, the Code section(s) to which they relate, and the circumstances surrounding the alleged violation. The accused educator is given an opportunity to respond immediately and to raise objections.

On receipt of the respondent's reply, the committee may decide to follow one of four courses of action:

1. Drop the case because the respondent's objection is of such high quality as to convince the committee that no violation occurred
2. Make a decision as to the discipline to be applied, since the respondent admits guilt and no dispute exists
3. Hold a disciplinary hearing to determine the merits of the complaint
4. Inform the respondent of the committee's intention to issue an informal admonition.

The last two routes to resolution will be explored further.

Disciplinary hearing

It may be anticipated that some of the larger states (particularly those in which the entire ethics committee meets as a body to conduct a full hearing and writes its own report of findings, conclusions, and recommendations) may experience difficulty in keeping pace with the case load. This may be true, even assuming, as our analysis suggests, that boards of education may handle more disputes about teacher behavior than ethics committees. It behooves these states to seek devices by which they can increase

the dispatch with which complaints are processed and brought to completion.

Regionalization. One method of expediting the holding of hearings that is used by some states is to regionalize committees. In other words, instead of having just one state committee, they have several regional committees, in order to spread the case flow. A disadvantage of this approach is that it increases the risk of diverse interpretations of Code sections. It also may suffer from some of the difficulties faced by local association committees, such as insufficient funding and staffing and less opportunity for the development of expertise.

Staff hearing officer. A second approach, which is used effectively by associations and by state and federal regulatory agencies, is to employ a hearing officer. The hearing officer travels to the point of the dispute and conducts an on-site hearing. On completion, he transmits a transcript of the proceedings, with his proposed findings and conclusions, for action by the committee. This process promises some potentials for further exploitation by education associations.

Committee hearing officer. A third alternative to help the state committee increase its capacity to handle multiple cases is for the committee to appoint hearing officers from among its own ranks. In this way, two or more committee members could conduct separate hearings in different locations on the same day. Their proposed findings and conclusions could be transmitted to the full committee as an advisory report. This approach has been used successfully by the national committee.

Whichever route a state association decides to follow in conducting hearings, it has an obligation to provide a neutral forum to hear both sides of the complaint and to render an impartial judgment.

Defects of counsel. Most professions and many education associations recognize that lay complainants who allege that their rights have been violated by a practitioner are disadvantaged by their lack of specific information about the *Code of Ethics of the Education Profession*, its interpretation, and the procedural rules of a private organization. Furthermore, lay persons cannot usually compensate for this difficulty by seeking assistance from an attorney; most attorneys, it must be assumed, would be similarly disqualified from competent presentation of a case by their lack of specific knowledge about the principles which underlie the Code and the diverse opinions rendered over a period of time. For these

reasons, associations frequently provide assistance to the lay complainant, so that the matter he raises may be presented in the most competent manner possible.

Many associations feel, however, that the factors described above are no longer relevant when the accuser and the accused are both educators. They recognize that to provide assistance to the educator complainant in prosecuting his case would probably bring forth from the educator respondent a protest of unequal treatment. In this setting, therefore, many associations choose to provide only a neutral forum and to request the educator disputants to present their own arguments with such counsel as they may choose to obtain but without special assistance from the association.

Since the structure and authority of the disciplinary hearing are quasi-judicial, safeguards must be observed to assure accused parties of protection of their rights of substantive and procedural due process. Readers are referred to the national committee's enforcement procedures[13] for a more detailed description of the ethics hearing, but some minimum substantive and procedural due process elements are described below:

Substantive due process requires, essentially, that the rule under which an individual is to be judged be free from vagueness, arbitrariness, and discriminatory application. Some elements of substantive due process are:

1. The violative behavior and punishment must be clearly identified and the rule stated clearly enough to give educators fair notice of what behavior will subject them to penalty, and what the penalty will be.
2. No act may be punished which is not inherently described in the Code of Ethics.
3. No act may be punished which took place prior to the adoption of the standard.
4. The rule must be construed according to the spirit and intent of its language.
5. When doubt exists as to the application of the rule, it must be construed in favor of the accused.
6. The thoughts and intents of an individual are not punishable. (The corollary of this rule is not true, since the motives of an individual may be a relevant defense.)[14]

Procedural due process requires that an accused individual be afforded all of the rights and opportunities which will assure him of a fair and impartial hearing. Essential elements include the following:

1. The burden of proof rests with the accuser.

2. The accused must receive notice of the hearing, including a statement of written charges.
3. The accused has the right to cross-examine witnesses and rebut evidence.
4. The accused has the right to submit evidence and produce witnesses.
5. The accused has the right to obtain counsel.
6. The accused has the right to an impartial tribunal.
7. Findings of fact must justify the decision that is reached.
8. Discipline applied must be commensurate with the nature of the offense.
9. A hearing record must be provided.[15]

While these rights are designed primarily to protect the accused from unjust action, it should be noted that the complainant has related procedural rights.

Upon termination of its hearing, the state committee should transmit its hearing record, with its findings and recommendations, to the local PR&R committee. Its recommendation may be: to dismiss the case; to censure the member; to suspend from membership; or to expel from membership.

In the event of discipline being applied, the accused may have the right to appeal to the Committee on Professional Ethics of the National Education Association.

Bases for appeal. Appellate matters fall into several categories:

1. When the matter in dispute relates to a conflicting interpretation of the *Code of Ethics of the Education Profession,* appeal to the national Committee on Professional Ethics is appropriate.
2. When the dispute relates to the status of an individual's local or state association membership (with respect to the degree of discipline imposed), the NEA Committee is without authority to resolve the conflict. (However, the Committee could assert a jurisdiction in such a matter, on request of the complainant.)
3. When the dispute relates to NEA membership, such as in a unified affiliation arrangement where, through agreement of the local, state, and national associations, an individual must belong to all three in order to belong to one organization, the NEA Committee may accept appellate jurisdiction.[16]

It should be understood that, in some instances, both parties may agree to use the NEA Committee as a neutral party for settling a dispute.

In cases of extreme, flagrant violation, the local or state committee may consider referral to the appropriate state agency (state board of education or professional practices commission) for consideration of suspension or revocation of the teaching certificate.

Informal admonition

In some situations, a state ethics committee may decide that an alleged ethical violation is so minor in nature as not to warrant a full disciplinary proceeding. At the same time, the ascertainment of probable cause, and the inability or failure of the respondent to raise a valid objection, may convince the committee that some action should be taken. In such instances, the committee may decide to administer an informal admonition. Here, too, certain precautions should be observed. The respondent should be given notice of the committee's intent and the opportunity to request (within a specified period of time) a disciplinary hearing so that the respondent may be afforded all of his due process rights. If the respondent requests a hearing, he forfeits his opportunity to receive an informal admonition; formal disciplinary proceedings may only result in acquittal or formal organizational discipline (censure, suspension, or expulsion).

If the member elects to accept the informal admonition, the committee will maintain permanently a confidential record of the action, so that it will be available in determining the extent of discipline to be applied in the event charges of similar unethical conduct are prosecuted against the educator at a later time.

In summary, local and state associations are necessarily dependent on each other for effective protection of the profession's capacity to independently assert its interest in ethical values. Generally, both exemplary ethical behavior and deplorably unethical conduct occur at the local level; local associations, because of their proximity, have an unparalleled opportunity to influence their members and the public with regard to ethical standards. On the other hand, when flagrant violations must be judged, the local association is severely disadvantaged in achieving objectivity and may find it expedient to have the state association perform the judging function. Both bodies may call on the national committee for advice or assistance at any time.

While professional processing of ethics complaints is a shared responsibility, the burden of protecting the profession's interest when ethical disputes are processed as employment matters falls chiefly on the local association. Suggestions as to how the local might accomplish this task are offered in the next chapter.

4 Role of the Local Association in School District Complaint Processing

BOARD AUTHORITY TO DISCIPLINE

School administrators and boards of education handle, within the employment setting, matters that are also of professional relevance within the *Code of Ethics of the Education Profession.*[17] Their authority derives from two sources:

1. Board policy and teaching contracts describe the conditions which govern teachers and a board of education in their employment relationship. The definition of employment conditions frequently describes, directly or by implication, some ethical standards.
2. State statute often confers additional authority on school boards to discipline teachers for "unprofessional" or "unbecoming" acts.

Not only do teacher employers have legal authority to take action in ethical matters, but experience shows that most employers affirmatively seek to assert that authority. In doing so, they may reflect their sometimes limited values and interests, with danger to the perpetuation of a single standard. The danger is further intensified by the fact that a larger percentage of ethical complaints are, and probably will continue to be, referred to the board for resolution than to the profession.

INSTITUTIONAL CAPABILITIES OF THE BOARD

A local board of education should not be seen as standing alone as it exercises authority in its employment relationship with teachers. Boards have available to them a variety of institutional devices, provided by the state in constitution and statute, to facilitate the exercise of their authority. They stand, therefore, as the first link in a formal chain of collateral agencies—such as state school boards, professional practices commissions, state departments of instruction, and state courts—all with the common function, under law, of seeing that the public's interest is advanced. In this context, therefore, a board of education has at its disposal

some powerful institutional capabilities to protect clients and the public from the alleged misconduct of educators:

1. The power to separate a teacher from employment through its discharge authority, and to initiate an action to revoke his certificate to teach (This latter route may be infrequently resorted to in relation to ethical matters.)[18]
2. An administrative staff of trained, professional persons who are able to carry out continuous supervision of teachers and detect misconduct
3. The capability, when disputes arise, to conduct a judicial hearing, with the important powers to subpoena witnesses and documents, to swear witnesses, and to discipline uncooperative parties through contempt proceedings.

PROBLEMS OF LAY CONTROL

When a board exercises the institutional capabilities at its disposal in a unilateral manner, it has some inherent incapacities to accomplish certain things which are important in terms of the public interest and of concern to the organized profession:

1. A board of education, because it is a lay body and not likely to be sensitive to the subtleties of principle and standard which mark the special expertness possessed by practitioners, cannot create a viable code of ethics. Nor does the board's authority extend beyond the limits of its own employees; unilateral control could therefore possibly result in some 20,000 different codes of ethical behavior for teachers, the dangers of which have been mentioned.
2. The institutional structure presents no opportunity for cure of a defect through the appellate process. While a mistake by a local PR&R committee may be rectified through appeal to a body with a higher level of competence (state or national asociation), appeal within the board's structure offers no hope of increased competence, since all of the appeal agencies are lay bodies without professional qualifications. (An exception in some states is the professional practices commission, made up of members of the profession.)
3. The needs and interests of the teachers' employer, though in many ways parallel to those advanced by educators, cannot always be seen as identical. Kornhauser has pointed out that employing organizations and professional bodies typically differ with respect to (a) goals for professional work, (b)

controls for professional work, (c) incentives for professional work, and (d) influence of professional work. The application of his theory to the education profession is noted below.

Goals. The board's primary goal may be the efficient fiscal functioning of the school district or college, whereas the teacher's goal is typically a satisfactory teaching-learning relationship with students.

Controls. School districts and colleges are usually structured hierarchically, with control centered in the "line." The profession, however, tends to prefer colleagial controls.

Incentives. Boards and administrators may seek to reward loyalty by promotion within the institution. Teachers, on the other hand, often find little incentive in organizational status; their reward is in the achievement of an individual student.

Influence. Institutional authority in the school setting usually derives from law, whereas the authority within the profession claims legitimacy from special competence. A strain may therefore develop between the influence exerted by the two groups on members of the profession.[19]

These differences augur some possible areas of conflicting interests between employers and the profession, and it may be that some important values, in terms of the public interest and the profession's interest, would not be advanced by an employer.

ADVANTAGES OF JOINT DETERMINATION

Given the incapacities of the teachers' employer to assert professional values adequately in behalf of the public and members of the profession, and the teacher association's lesser opportunity to detect unethical behavior and to attract complaints, one might assume that the two bodies together can more effectively serve the public's interest in achieving a high quality of ethical practice on the part of educators than either one can do separately.

It may be unrealistic to expect that most boards of education would recognize the advantages of such a cooperative relationship, or that they would seek to initiate a mutual functioning in matters of teacher ethical conduct. It therefore behooves the organized profession to seek strategies to influence the employer's exercise of authority, in a manner to assure that the broad public interest will be asserted and that the profession's own values will not be sublimated to employment and political concerns.

DEVICES FOR INFLUENCING EMPLOYERS

In seeking to develop mechanisms for linking into the institutional machinery of the school district or college and to make itself relevant in the employment setting, an association might think of a number of approaches. Of course, teachers as individuals and in groups have sometimes used extemporaneous political tactics with effect. These should not be depreciated, but they may be looked upon as extreme devices, which sometimes tend to be disruptive and to aggravate rather than to correct. Our discussion here will be limited to the institutional devices that local associations can use for influencing employer activity in the ethics area and that promise to provide a necessary stability. It is suggested that the association think in terms of two spheres of activity:

1. The *substantive* elements of influence (the board's definition of ethical standards)
2. The *procedural* elements of influence (the manner in which the board executes such rules or policies).

A variety of alternatives will be analyzed in each area in terms of their likelihood of success.

Substantive approaches to control

Board policies. Boards of education have frequently reported dissatisfaction with such vague terminology as "unprofessional acts" and "conduct unbecoming the teacher" that is widely prevalent in state statute and that places a burden on the board to define. Some boards have sought to define the ambiguous language more explicitly in board policies, by describing the duties and obligations of teachers as they relate to the board's expectations regarding teacher competence and acceptable professional behavior. Other definitions have grown out of precedent—a board makes a decision in a case and uses that decision as a model in similar cases that arise. Whether they grow out of policy or precedent, resulting definitions have often been incomplete with respect to what is expected or required of teachers. Others have been in conflict with the standards endorsed by teachers in their professional code and have raised values with which teachers would disagree.

Some subjects dealt with in the Code of Ethics which are also commonly included in some form of board policies are:

- Protection of health and safety of children
- Nondiscrimination

- Commercial exploitation
- Gifts and gratuities
- Tutoring
- Public statements
- Partisan politics
- Procedures for termination of employment
- Channels for conducting professional business
- Use of released time
- Discipline of students.

When board policies conflict with a section of the Code, an educator may be in violation of one standard or the other. To take a hypothetical situation, a board policy might provide that a principal not give a written statement of reasons for his recommendation of nonrenewal of a probationary teacher's contract. The Code requires, however, that he provide "upon the request of the aggrieved party a written statement of specific reason for recommendations that lead to . . . termination of employment." The principal obviously cannot conform to both standards.

Avenues to avoiding conflict. The problems raised by varying standards for teacher behavior are manifold. Possibly one of the most serious is the deterrent effect on teacher initiative of defining standards on an "ad hoc" basis—that is, with no consistent, clearly identifiable rules as to what behavior is appropriate and what is not. Experience shows that, in the absence of clear policy, teachers are often reluctant to do anything that is not prescribed in contract.

Profession explicitly recognized. The Committee suggests that the most effective route to influencing the employer's substantive control (or definition) of ethical matters is to persuade the employer to adopt a statement such as the following:

> *"No educator will be required by his employer to violate the Code of Ethics of the Education Profession."*

Such an approach would advantage both the employer and the teachers' organization, as well as afford greater protection of the public's interest, through the accomplishment of three objectives:

1. Definition of vague statutory and policy language, by providing a well-framed standard to be applied

2. Reduction of conflict between the employer and teachers regarding standards
3. Increased assurance to teachers that their appropriate ethical behavior would generally not be punished.

The adoption of such a policy does not appear to require the board to give up, in a manner that might be judged unlawful, any of its discretion to act. It was suggested in the second chapter of this publication that boards might be willing to refer complaints of unethical behavior by teachers to the teachers' professional organization for processing, but it was noted that such an approach might be subject to challenge in the courts. The present suggestion appears to be more acceptable, since it simply provides a mechanism for the board to submit the exercise of its discretion to a test of reasonableness as established by the Code.

Partial agreement. If an association is unable to obtain such an agreement from the employer, it may still be able to persuade the board to accept the profession's standards in certain areas. For example, a board might agree not to develop a policy which would be inconsistent with the profession's standard expressed in the Code in such areas as tutoring, procedures for discharge and demotion, channels for conducting professional business, and public expressions. This approach, in effect, promises a partial resolution of conflict, through the obtaining of agreement on a policy by policy basis.

Precedential decisions. A third route that is always open to the association is the seeking of precedential decisions. Whether or not the board has agreed that it will not require an educator to violate the Code, the Association is always free to seek to influence the board in its employment decisions. Whenever a board seeks to take an action against a teacher for behavior which the association considers proper, the association, in its representative role, will usually attempt to show that the board's act is unreasonable and in conflict with the reasonable standard set forth in the Code.

For example, a superintendent might recommend the discharge of a teacher who spoke out in the community in opposition to a school bond issue, after disclaiming that he represented the school district's view. The association's position would probably be that the teacher must be free, as a citizen, to separate himself from his institutional position as an educator and to speak out on public issues, provided that he makes clear that he speaks only as an individual and not in behalf of the school district. In a dis-

charge hearing on such a matter, therefore (either before the board, a neutral arbitrator, or a court), the association would assert the teacher's right to act as he did. If the hearing body were convinced of the efficacy of the association's position and decided in favor of the teacher, the particular standard advanced by the profession would achieve official standing and might be used to influence the board's action in future cases of a similar nature.

While the above approach is always available, its limited application should be recognized, and it should not be viewed as an adequate substitution for the obtaining of an agreement with the board that educators will not be required to act in a manner inconsistent with the Code.

Procedural approaches to control

We have described the employer's interest in ethical standards and some of the problems inherent in the regulation of teacher ethical conduct within the employment setting. We have further examined some of the ways in which the organized profession can influence the employer in respect to what constitutes an ethical standard. We are also concerned, however, about the *manner in which* the employer executes his policies that have ethical content. The organized profession must seek an institutional device through which to protect its members against the possible capricious exercise of an employer's authority. Several routes are commonly followed to accomplish this goal, including the three described below:

1. The judicial grievance procedure
2. The administrative line
3. The faculty senate.

Judicial grievance procedure. A judicial grievance procedure, in the Ethics Committee's view, is an ideal vehicle through which to influence in a formal way the decisions made by the employer as they relate to teacher ethical conduct.[20] It provides for the submission of employment disputes to an outside neutral party for binding settlement. (The administrative line, in contrast, provides only the opportunity for one party to attempt to persuade the other party.) Formal grieving usually requires the presence of an employee whose employment condition has been provably affected by the action or by the lack of action of his employer or an agent of the employer. It also usually requires a claim that a contractual right afforded the employee has been allegedly breached.

It should be clear that the opportunity of a teachers' organization to protect its members through a judicial grievance procedure when they are disciplined inappropriately for ethical behavior will be strongest when the association has been successful in limiting the employer's substantive control of standards. For example, if the employer has agreed formally in policy not to require an educator to act in a manner contrary to the Code, such a clause will form the basis of a grievance if the governing board or one of its administrative officers violates that agreement.

The association's opportunity to effectively assert the member's interest is weakened when the agreement is absent. In that instance, the association may attempt to prove that the employer's exercise of authority was unreasonable—that is, arbitrary or discriminatory. If the action of the board can be found to be reasonable in the eyes of the law, however, even though it may be in conflict with the profession's standard, the association will stand little chance of winning a favorable decision in a grievance hearing.

Administrative line. If no judicial grievance procedure exists, as is true in many school districts and colleges throughout the country, appeal is still available into the administrative line. Again, appeal to an administrator and/or governing board is more likely to be successful if the board has adopted the suggested policy or if the board's action can be shown to be unreasonable. Even when either or both of these conditions exist, resolution may be difficult to achieve short of a court action. In the absence of a judicial grievance procedure, some associations do pursue their concerns through the courts to obtain an opportunity to present their claims before a neutral party. The legal route poses problems, however, in terms of the extended amount of time and the heavy expenses involved.

While the administrative line approach holds less promise for resolution than a judicial grievance procedure, associations that have not yet obtained such a procedure should not feel that no opportunity for remedy exists.

Faculty senate. Members of the profession who work in higher education frequently seek to use the faculty senate as a path to achieving resolution of their employment disputes. However, as noted by Lieberman in his paper, "Representational Systems in Higher Education," the faculty senate may not be significantly different from the administrative line. It, too, may fail to provide for appeal from its adverse decisions. In addition, many faculty

senates do not see their role as one of advocacy for an aggrieved faculty member but rather as that of a neutral in resolving employment disputes. Finally, the senates tend to fail as a representational body because they are not under the control of their constituents.[21]

USING THE GRIEVANCE PROCEDURE

Generally speaking, a judicial grievance procedure appears to be the most effective remedy for bringing about equity in employment disputes that relate to allegations of ethical violation, but it should be realized at the outset that a grievance procedure does not work in all situations. For example, it does not provide a ready solution when no dispute exists, such as in a concerted agreement between the employer and the employee to violate the Code. Usually there is no aggrieved party in such instances, since parents and students do not have standing in the grievance procedure. Such problems should be handled through the internal devices of the teachers' organization, as described in the preceding chapter.

Advocate or judge?

In the discussion in chapter 2 of the problems faced by local associations in asserting their interest in ethical standards, mention was made of the role conflict that often arises when an association attempts to simultaneously judge and defend a member. It was pointed out that when a local association has been recognized formally as the agent to represent members of a defined negotiating unit in their relationships with their employer, such formal recognition frequently assumes an obligation on the part of the association to provide fair representation in a grievance procedure.[22] It was similarly assumed that even when no such formal relationship exists, a typical member of a local association anticipates that the association will support him and advocate his feelings and needs in respect to a dispute with his employer.

When a member seeks to have his association support him in a grievance, however, which could also represent a serious violation of the profession's Code, he may be asking for more than the requirements of fair representation will provide. The association confronts three possibilities in that instance, two of which are relatively straightforward, and the third of which is extremely difficult:

1. Advocacy of the member's cause in the dispute with his employer

2. Protection of the member's due process rights in the grievance procedure but refusal to speak in his behalf
3. Advocacy in the lower step grievance procedure, leading to withdrawal of support as new evidence emerges.

The association's choice among the three alternatives may be based on some of the factors described below.

Advocacy of member's cause. When an issue is clear in the eyes of the association, and it stands convinced that the member's claim is correct, that his right has been violated by the act of his employer, the association would support his position.

The association would also generally advocate a member's cause when it judged that the penalty applied by the employer was in excess of the misconduct and should be eliminated or moderated. In such an instance, the association might not speak in behalf of the individual's right to act as he did but only to the unreasonableness of the punishment.

The association might take a similar advocacy line when an employment dispute has very minor ethical overtones.

Refusal to support. It must be clear that when a member has violated both the Code and a condition of employment, and no fact dispute exists, and the punishment was reasonable, the association may refuse to advocate the member's position in the grievance procedure. While a member always has the right of access to the procedure, and the association may perform a "watchdog" function to assure that his rights of due process are protected, it is not obligated to advocate a member's interest which is in opposition to the group's interest. Any representational organization has the ultimate right to make a determination not to support a grievance *for cause*—its decision may not be arbitrary or discriminatory.

If, for example, in violation of the Code and board policy, a teacher sought to tutor students in his class for pay, when other qualified teachers were available, and insisted on his right to do so, the association might inform him that it could not agree with him or support his behavior. They might further warn him that continued violation would result in an ethics charge.

Experience shows that whenever associations err in their administration of discipline and advocacy of members, their error tends to be on the side of excessive judging and screening rather than on the advocacy side. Sometimes PR&R and ethics committees appear to prefer to hold a hearing and apply discipline than to

assist a member to defend or adjust his behavior. Associations are therefore urged to exercise caution in refusing a member's request for support.

Advocacy to nonadvocacy. When a fact dispute exists and the association is unable, through its investigation, to determine initially whether the member's claim is correct and supportable, it will generally act as the member's advocate, on the assumption that his grievance has merit until it is proven to lack merit.

If the member's claim is corroborated in the process of negotiation and discussion, the association would continue to use its resources to achieve equity for the aggrieved individual. If, however, it becomes clear in the course of the grievance hearing or arbitration hearing that the preponderance of facts indicates that the teacher has no basis for grievance, and that he has, furthermore, committed a serious ethical violation, the association is not obligated to continue as a blind advocate. Rather, it will usually make the more difficult choice of withdrawing its support and recommending to the member that he drop his grievance. It may further place the matter before the state association for a professional hearing, or it may take the position that the board's punishment is sufficient and not pursue further action.

Single committee structure

Regardless of the course it chooses to pursue, it is clear that the association should not be in a position of advocacy and prosecution at the same time. If it is, its integrity and sincere purpose will be undermined and the trust relationship with its members and the public damaged. An avenue to avoiding such schizophrenia is to provide that the defending and judging functions be carried out by a single committee of the association, rather than by two separate committees. When separate committees operate, it is probably unrealistic to expect an association president or some other individual or body to be sufficiently aware of the specific cases before each committee in time to prevent a possible conflict between their activities. Consequently, a situation where one body defends a member and another prosecutes him simultaneously for the same act may be unavoidable. However, a single committee (probably a PR&R committee), responsible for processing both grievances and ethics complaints, could be aware of all the relevant factors in a case at the outset and be able to prevent such conflict. The committee would also be in a position to determine whether a case that is the subject of a simultaneous legal proceeding should be pursued, dropped, or postponed.

Teachers operate as employees in an institutional setting, and their employers have a vital and legitimate interest in their behavior, which they exercise persistently. The organized profession can best maximize its potential influence on ethical standards if it recognizes the priorities of competing authority structures and pursues strategies which will restrain employers from defining standards arbitrarily and from applying them capriciously. The Committee on Professional Ethics hopes that the approaches suggested in this chapter will help local associations to achieve those goals.

Appendix A

CODE OF ETHICS OF THE EDUCATION PROFESSION

Adopted by the NEA Representative Assembly, July 1968. Amended July, 1970 . . .

Preamble

The educator believes in the worth and dignity of man. He recognizes the supreme importance of the pursuit of truth, devotion to excellence, and the nurture of democratic citizenship. He regards as essential to these goals the protection of freedom to learn and to teach and the guarantee of equal educational opportunity for all. The educator accepts his responsibility to practice his profession according to the highest ethical standards.

The educator recognizes the magnitude of the responsibility he has accepted in choosing a career in education, and engages himself, individually and collectively with other educators, to judge his colleagues, and to be judged by them, in accordance with the provisions of this code.

Principle I—Commitment to the Student

The educator measures his success by the progress of each student toward realization of his potential as a worthy and effective citizen. The educator therefore works to stimulate the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful formulation of worthy goals.

In fulfilling his obligation to the student, the educator—

1. Shall not without just cause restrain the student from independent action in his pursuit of learning, and shall not without just cause deny the student access to varying points of view.
2. Shall not deliberately suppress or distort subject matter for which he bears responsibility.
3. Shall make reasonable effort to protect the student from conditions harmful to learning or to health and safety.
4. Shall conduct professional business in such a way that he

does not expose the student to unnecessary embarrassment or disparagement.

5. Shall not on the ground of race, color, creed, or national origin exclude any student from participation in or deny him benefits under any program, nor grant any discriminatory consideration or advantage.
6. Shall not use professional relationships with students for private advantage.
7. Shall keep in confidence information that has been obtained in the course of professional service, unless disclosure serves professional purposes or is required by law.
8. Shall not tutor for remuneration students assigned to his classes, unless no other qualified teacher is reasonably available.

Principle II—Commitment to the Public

The educator believes that patriotism in its highest form requires dedication to the principles of our democratic heritage. He shares with all other citizens the responsibility for the development of sound public policy and assumes full political and citizenship responsibilities. The educator bears particular responsibility for the development of policy relating to the extension of educational opportunities for all and for interpreting educational programs and policies to the public.

In fulfilling his obligation to the public, the educator—

1. Shall not misrepresent an institution or organization with which he is affiliated, and shall take adequate precautions to distinguish between his personal and institutional or organizational views.
2. Shall not knowingly distort or misrepresent the facts concerning educational matters in direct and indirect public expressions.
3. Shall not interfere with a colleague's exercise of political and citizenship rights and responsibilities.
4. Shall not use institutional privileges for private gain or to promote political candidates or partisan political activities.
5. Shall accept no gratuities, gifts, or favors that might impair or appear to impair professional judgment, nor offer any favor, service, or thing of value to obtain special advantage.

Principle III—Commitment to the Profession

The educator believes that the quality of the services of the education profession directly influences the nation and its citizens. He therefore exerts every effort to raise professional standards, to improve his service, to promote a climate in which the exercise of professional judgment is encouraged, and to achieve conditions which attract persons worthy of the trust to careers in education. Aware of the value of united effort, he contributes actively to the support, planning, and programs of professional organizations.

In fulfilling his obligation to the profession, the educator—

1. Shall not discriminate on the ground of race, color, creed, or national origin for membership in professional organizations, nor interfere with the free participation of colleagues in the affairs of their association.
2. Shall accord just and equitable treatment to all members of the profession in the exercise of their professional rights and responsibilities.
3. Shall not use coercive means or promise special treatment in order to influence professional decisions of colleagues.
4. Shall withhold and safeguard information acquired about colleagues in the course of employment, unless disclosure serves professional purposes.
5. Shall not refuse to participate in a professional inquiry when requested by an appropriate professional association.
6. Shall provide upon the request of the aggrieved party a written statement of specific reason for recommendations that lead to the denial of increments, significant changes in employment, or termination of employment.
7. Shall not misrepresent his professional qualifications.
8. Shall not knowingly distort evaluations of colleagues.

Principle IV—Commitment to Professional Employment Practices

The educator regards the employment agreement as a pledge to be executed both in spirit and in fact in a manner consistent with the highest ideals of professional service. He believes that sound professional personnel relationships with governing boards are built upon personal integrity, dignity, and mutual respect. The

educator discourages the practice of his profession by unqualified persons.

In fulfilling his obligation to professional employment practices, the educator—

1. Shall apply for, accept, offer, or assign a position or responsibility on the basis of professional preparation and legal qualifications.
2. Shall apply for a specific position only when it is known to be vacant, and shall refrain from underbidding or commenting adversely about other candidates.
3. Shall not knowingly withhold information regarding a position from an applicant or misrepresent an assignment or conditions of employment.
4. Shall give prompt notice to the employing agency of any change in availability of service, and the employing agent shall give prompt notice of change in availability or nature of a position.
5. Shall adhere to the terms of a contract or appointment, unless these terms have been legally terminated, falsely represented, or substantially altered by unilateral action of the employing agency.
6. Shall conduct professional business through channels, when available, that have been jointly approved by the professional organization and the employing agency.
7. Shall not delegate assigned tasks to unqualified personnel.
8. Shall permit no commercial exploitation of his professional position.
9. Shall use time granted for the purpose for which it is intended.

Appendix B

Proposed Bylaw Language for Local Associations

ADHERENCE TO THE CODE OF ETHICS, A CONDITION OF MEMBERSHIP

Adherence to the Code of Ethics of the Education Profession adopted by the Association shall be a condition of membership. The Executive Committee shall have the power to censure, suspend, or expel any member for violation of the Code upon recommendation of the Professional Rights and Responsibilities Committee. The Professional Rights and Responsibilities Committee shall provide evidence of notice and fair hearing, such hearing conducted at its request by the state education association Ethics Committee. The Executive Committee shall have the power to reinstate any suspended or expelled member.

Appendix C

PROPOSED CLAUSE FOR INCLUSION IN A UNIFICATION AGREEMENT CONFERRING RECIPROCITY IN DISCIPLINARY ACTS, AND SOURCES OF APPEAL

A decision of the appropriate body (PR&R Committee, Ethics Committee, Executive Committee) of an association (local, state, national) party to this agreement to discipline a member by suspension or expulsion from membership on a basis of that member's violation of the Code of Ethics of the Education Profession shall be binding upon each other association party to this agreement. The same penalty shall be effected by each association upon notice that the decision was reached after opportunity was provided for a fair hearing, such penalty to be executed only after the time for filing an appeal has expired.

A disciplinary action by a local association shall be subject to appeal for cause to the appropriate body of the state association, and a disciplinary action by a state association shall be subject to appeal for cause to the appropriate body of the national association. The decision of the appellate body shall be binding upon all parties as soon as the time for further appeal has expired. Final authority shall be vested in the Executive Committee of the National Education Association.

Footnotes

1. MacIver, Robert M. "The Social Significance of Professional Ethics." *Ethical Standards and Professional Conduct.* The Annals of the American Academy of Political and Social Science. January 1955.
2. National Education Association. *Platform and Resolutions.* Detroit, Michigan: the Association, 1963. pp. 65-66.
3. See Bibliography for complete citations.
4. *Vaca v. Sipes,* 386 U.S., 171.64 LRRM 2369 (1967). (This precedent from the private sector is used by analogy, since no public sector precedent exists.)
5. American Bar Association. *Problems and Recommendations in Disciplinary Enforcement.* Preliminary Draft. 1970.
6. Lortie, Dan C. "The Balance of Control and Autonomy in Elementary School Teaching." *The Semi-Professions and Their Organization.* New York: The Free Press, 1969.
7. Getzels, J. W., and Guba, E. G. "The Structure of Roles and Role Conflict in the Teaching Situation." *Journal of Educational Sociology* 29: 30-40; September 1955.
8. Gross, Neal; Mason, Ward S.; and McEachern, Alexander W. *Explorations in Role Analysis.* New York: John Wiley and Sons, 1958.
9. See Appendix B for suggested Bylaw wording. Organizational discipline is typically restricted to censure and suspension or expulsion from membership. Associations may consider the use of informal admonitions, as described in chapter 3, as an additional disciplinary measure.
10. The role of the Committee in grievance processing is described in the following Commission publication. National Education Association, Commission on Professional Rights and Responsibilities. *The Local Education Association and Grievance Adjustment.* Washington, D.C.: the Commission, 1966. 12 pp.
11. National Education Association, Committee on Professional Ethics. *Opinions of the Committee on Professional Ethics.* Washington, D.C.: the Association, 1969. 113 pp.
12. See Appendix B for suggested terminology for local association bylaws.
13. National Education Association, Committee on Professional Ethics. *Enforcement of the Code of Ethics of the Education Profession.* Washington, D.C.: the Association, 1969. 19 pp.
14. Clark and Marshall. *A Treatise on the Law of Crimes.* (Edited by Marian Quinn Barnes.) Seventh edition. Mundelein, Ill.: Callaghan Co. 1967. Chapter 1.
15. Lorch, Robert S. *Democratic Process and Administrative Law.* Detroit, Mich.: Wayne State University Press, 1969. Chapter 6.
16. See Appendix C for a sample contract which describes the mutual duties of the three associations in a unified partnership.
17. The point is made by the Harvard Law Review Association that boards may not legally delegate their responsibility to discipline teachers. ". . . a contract vesting the right to hire and fire teachers in a professional association would be an illegal delegation of the school board's statutory power to make these decisions." Harvard Law Review Association. "Developments in the Law—Academic Freedom." *Harvard Law Review* 8:1123; March 1968.

18. DiNello, Maria C. and Hawkins, Harold L. "A Survey of the Revocation of Teaching Certificates." College of Education, Texas A & M University, 1968. (Unpublished). According to the study, 23 states report "unprofessional conduct" as a possible basis for revocation of certificates. However, of a total of 398 revocations reported by all states for the two-year period 1967 and 1968, about two-thirds listed as the cause for revocation violation of the law (128), immorality (104), or abandonment of contract (32). Furthermore, one state (California) accounted for about 53 percent of the total revocations, and 26 states reported no revocations during the two-year period.
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20. Wollett, Donald H., and Chanin, Robert H. *The Law and Practice of Teacher Negotiation*. Washington, D.C.: The Bureau of National Affairs, Inc., 1970. pp. 3:24 - 3:36.
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